(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: October 30, 2000.

Margaret E. Lawless,

Deputy Associate Director for Mitigation.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 20, 42, 61, 63, and 64

[IB Docket No. 00–202, FCC 00–367]

Policy and Rules Concerning the International Interexchange Marketplace and 2000 Biennial Regulatory Review

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: This document solicits comments on whether the Commission should continue to require U.S. non-dominant interexchange carriers to file tariffs for international services pursuant to the requirements of the Communications Act. The Commission initiated this proceeding to determine whether to extend the complete detariffing regime that it adopted for domestic, interexchange services to the international services of non-dominant interexchange carriers, including U.S. carriers classified as dominant due to foreign affiliations. The Commission believes that these proposals will foster competition in the U.S. international services market and bring lower rates to U.S. consumers.

DATES: Comments are due on or before November 17, 2000, and reply comments are due on or before December 4, 2000.

ADDRESSES: Federal Communications Commission, Secretary, 445 12th Street, SW., Room TW–B204F, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Lisa Choi, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–1460.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, FCC 00–367, adopted on October 12, 2000, and released on October 18, 2000. The full text of this document is available for inspection and copying during normal business hours in the Office of Media Relations, Reference Operations Division, (Room CY–A257) of the Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. The document is also available for download over the Internet at http://www.fcc.gov/Bureaus/International/Notices/2000//fcc00367.doc. The complete text of this document also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

This NPRM contains proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA). It will be submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the proposed information collections contained in this proceeding.

Summary of Notice of Proposed Rulemaking

1. In 1996, the Commission adopted policies and rules regarding the detariffing of domestic interexchange services (Domestic Detariffing Order) (61 FR 59340, November 22, 1996). In the Domestic Detariffing Order, the Commission concluded that complete detariffing with limited exceptions for permissive detariffing, satisfies the criteria set forth in section 10(a) of the Communications Act. The Commission made no determination as to whether detariffing international, interexchange services satisfied the requirements of section 10, as competitive conditions in the international marketplace may vary from those in the domestic interexchange marketplace.

2. On October 12, 2000, the Commission adopted a Notice of Proposed Rulemaking (NPRM) to determine whether competitive conditions in the international interexchange marketplace support detariffing non-dominant carriers' provision of international services in accordance with the criteria in section 10 of the Communications Act of 1996. The Commission initiated this proceeding in response to the Communications Act of 1996, which requires the Commission to review all regulations that apply to operations or activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be no longer necessary in the public interest. Since adopting the Domestic Detariffing Order, there have been dramatic changes in the market for international interexchange services resulting in increased competition. Thus, the Commission commenced this proceeding to examine whether to continue to require U.S. non-dominant interexchange carriers to file tariffs for international services pursuant to the requirements of section 203 of the Act. The Commission solicits comments on all of the proposals and tentative conclusions contained in the NPRM.

3. The NPRM seeks comment on the Commission's tentative conclusion that the Communications Act requires it to forbear from applying section 203 of the Act and to adopt a policy of complete detariffing for international interexchange services with limited exceptions for permissive detariffing. The NPRM seeks comment on the Commission's determination that its proposals meet the statutory forbearance criteria of section 10 of the Communications Act.

4. The NPRM solicits comment on the Commission's tentative conclusion that tariff filing requirements are not necessary to ensure that the charges, practices, classifications or regulations for the international interexchange services of non-dominant interexchange carriers are just and reasonable, and are not unjustly or unreasonably discriminatory. The NPRM also solicits comment on whether there remains a justification to retain tariffs on certain routes on which sufficient competition may not exist. The Commission tentatively concludes that its policies and enforcement authority, in conjunction with market forces will generally ensure that the rates, practices, and classifications of non-dominant interexchange carriers for international interexchange services will be just and reasonable and not unjustly or unreasonably discriminatory.

5. Comments are requested on the Commission's tentative conclusion that tariffs are not necessary for the protection of consumers of interexchange services. The Commission tentatively concludes that tariffs are not necessary for the protection of consumers. Rather, the Commission believes that tariff filing requirements may harm consumers by undermining the development of competition and possibly leading to higher rates by stifling price reductions

and marketing innovations. The Commission tentatively concludes that detariffing will benefit consumers by permitting carriers to respond to price and service changes in an unregulated manner. The NPRM also discusses the ''filed-rate'' doctrine and seeks comment on the Commission's tentative conclusion that only with complete detariffing can the Commission be certain to avoid the uncertainty, confusion, and potential harm to consumers associated with the ''file-rate'' doctrine. The NPRM seeks comment on whether detariffing will protect consumer harm.

6. The NPRM also seeks comment on the Commission's tentative conclusion that complete detariffing for international interexchange services will enhance competition among providers of such services, promote competitive market conditions, and achieve other objectives that are in the public interest. The NPRM sets forth the Commission's analysis on the benefits of complete detariffing and how it meets the statutory forbearance criteria, and comments are requested on these issues whether complete detariffing is in the public interest. In the Domestic Detariffing Order, the Commission found that permissive detariffing, as opposed to complete detariffing, satisfied the public interest and is warranted in two instances: (1) international interexchange direct-dial services to which end-users obtain access by dialing a carrier access code; and (2) international interexchange services provided during the initial forty-five days of service or until there is a written contract between the carrier and the customer. The NPRM addresses these exceptions, and comments are solicited on the Commission's conclusions and whether there are limited exceptions for permissive detariffing.

7. The Commission believes that consumers must have adequate information concerning carriers' rates, terms and conditions to ensure carrier compliance with requirements and for consumers to determine the most appropriate rate plans available. The Commission proposes to require non-dominant interexchange providers of international services to disclose information about their rates, terms and conditions to the public, maintain price and service information regarding the international offerings that can be submitted to the agency upon request, and post information about their offerings on their Internet websites. The Commission proposes that carriers provide the same information that is currently provided in tariffs, and the information must be available to the public in at least one location during regular business hours. The Commission also proposes that carriers with Internet websites post this information on-line in a timely and easily accessible manner with regular updates. The NPRM solicits comments on the proposals regarding maintenance of price and service information and the public disclosure requirements.

8. The NPRM also addresses the issue of price squeeze behavior, and it seeks comment on whether complete detariffing will affect the Commission's ability to monitor potential price squeeze behavior on international routes where U.S. carriers are affiliated with foreign carriers that possess market power.

9. The NPRM also seeks comments on the proposal that the Commission revisit its previous conclusion that permissive detariffing of CMRS providers of international services on unaffiliated routes is in the public notice.

10. The NPRM discusses the carrier-to-carrier contract filing requirement in § 43.51 of the Commission's rules and solicits comments on the Commission's tentative conclusions and proposals to limit the requirement to contracts between an authorized carrier and: (1) An authorized carrier classified as dominant for reasons other than a foreign affiliation; and (2) a foreign carrier possessing market power.

Procedural Matters

11. *Ex Parte Presentations.* This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *Ex Parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written presentations are set for section 1.120(b) of the Commission's rules as well.

12. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided herein, including this IRFA, to the Chief Counsel for the Advocacy of the Small Business Administration. In addition, the NPRM and IRFA comments will be published in the **Federal Register**.

13. *Need for, and Objectives, of, the Proposed Rules:* The Commission is issuing this NPRM to review our regulatory regime for international interexchange telecommunications services, and to implement certain provisions of the 1996 Act. In light of the dramatic changes in the market for international interexchange services resulting from increased privatization and liberalization of foreign markets, the World Trade Organization (WTO) Basic Telecom Agreement, decreasing settlement rates and increased competition in the U.S. international services market, we believe it is timely for us to review our requirement that U.S. carriers file tariffs for international interexchange services under section 203 of the Act. Because tariffs can limit the flexibility necessary for all U.S. carriers, including smaller carriers, to offer new services in a competitive market and may harm consumers through the effect of the ''filed rate doctrine,'' we propose requiring complete or mandatory detariffing, with limited exceptions, in this NPRM for the international interexchange services provided by non-dominant carriers. Complete detariffing will reduce carriers' filing costs, and, on balance, the public disclosure and maintenance of information requirements proposed in this item are minimal and do not outweigh the benefits to all U.S. carriers and U.S. consumers to be gained from detariffing. The objective of the NPRM is to provide an opportunity for public comment and to provide a record for a Commission decision on the issues stated above.

14. *Legal Basis:* We tentatively conclude that section 10 of the Communications Act requires the Commission to forbear completely from the tariff requirements contained in section 203 of the Communications Act. In addition, section 11 of the Communications Act directs the Commission to undertake a biennial review of its regulations concerning the operations or activities of any provider of telecommunications services. Thus, the NPRM is adopted pursuant to sections 1, 2, 4, 10, 11, 201–205, 218, 220, 226, 303(g), 303(r) and 332 of the Communications Act of 1934, as amended. 47 U.S.C. 151, 152, 154, 160, 161, 201–205, 215, 218, 220, 226, 303(g), 303(r) and 332.

15. *Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply:* The RFA

directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The Regulatory Flexibility Act defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under section 3 of the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Any rule changes that might occur as a result of this proceeding could impact entities which are small business entities, as defined in section 601(3) of the Regulatory Flexibility Act. The proposed rules in this NPRM will reduce regulatory burdens on all non-dominant providers of international interexchange services, including small business entities.

16. The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such companies that had been operating for at least one year at the end of 1992. According to the SBA's definition, a wireline telephone company is a small business if it employs no more than 1,500 persons. All but 26 of the 2,321 wireline companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 wireline companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 2,295 of these wireline companies are small entities that might be affected by these proposals.

17. Specifically, the proposals contained in the NPRM apply to entities seeking authorization to provide international service. The proposals, however, may affect other entities as well. The Commission, therefore, encourages interested parties to comment on the proposals in the NPRM. The proposals contained in the NPRM are intended to improve market efficiency by permitting carriers to respond to the dynamics of the marketplace and further the goals of the Communications Act. At this time, we are not certain as to the number of small entities that will be affected by the proposals. Agency data indicates there has been a steady increase in the number of section 214 applications filed with the Commission. The total number of licensees is difficult to determine, because many licenses are jointly held by several licensees. Based on agency data, we would estimate that there could be 800 applicants that might be a small entity.

18. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements:* We believe that the proposed rules will reduce significantly the reporting burdens placed on small entities. The proposed rules would eliminate the requirement of filing tariffs for non-dominant interexchange carriers. These carriers would be required to retain business records containing price and service information regarding their international interexchange offerings. This information, however, is maintained by carriers in the normal course of business. The proposed rules only impose a requirement that providers of international interexchange services maintain this information for a period of at least two years and six months. It is likely that carriers maintain this information for this specific time period, as a normal business practice.

19. We propose that carriers adopt a public disclosure requirement to make information available to the public concerning current rates, terms, and conditions for all of their international interexchange services, in at least one location during regular business hours. For those carriers with Internet websites, we propose that the carriers make the information available on their websites. In lieu of tariffs, the public disclosure requirement will ensure that the information is readily available to the public in an accessible format.

20. The rules also propose to modify the requirement for filing carrier-to-carrier contracts, thereby reducing the filing burden on most carriers. We propose to simplify and modify our rules and set forth specific criteria that would trigger the carrier contract filing requirement.

21. The proposals should enhance competition among providers of services, promote competitive market conditions and achieve benefits for the consumers while reducing the regulatory burdens on all non-dominant providers of international interexchange services, including small business entities.

22. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered:* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

23. We believe that the proposals will facilitate the development of increased competition in the international telecommunications marketplace and provide more flexibility for carriers to respond to the dynamics of the marketplace. Accounting rate reform policies, market forces, and increased competitive entry into the U.S. market have led to substantial reductions in consumer rates for international interexchange services. We believe that tariffs are no longer necessary to ensure that charges, practices, classification or regulations are just and reasonable and are not unjustly or unreasonably discriminatory. In addition, we believe that our proposals will contribute to market efficiency by permitting carriers to respond to the dynamics of the marketplace.

24. In considering alternatives for small entities, we believe that the proposals contained in the NPRM are the least burdensome on small entities. We do not propose to standardize the requirements because the information is unique to the carrier and may be maintained in a manner that is consistent with the carrier's business practices. We propose to reduce the administrative costs to small entities by eliminating the tariff filing requirement. In addition, the public disclosure requirement should not impose burdens on small entities because the information is maintained in the normal course of business.

25. In this NPRM, we are proposing to extend the policies and rules regarding the detariffing of domestic interexchange services to the international interexchange services of non-dominant carriers. We request comment on whether small entities would be adversely affected by the proposals herein and whether the proposals will enable small entities to respond to the demands of the market

with minimum regulatory oversight, delays, and expenses. We believe that our proposals would have either no impact, or would reduce, any economic burdens on small entities. After evaluating the comments in this proceeding, the Commission will further examine the impact of any rule changes on small entities and set forth findings in the Final Regulatory Flexibility Analysis.

26. *Federal Rules Which Overlap, Duplicate or Conflict with the Commission's Proposal:* None.

27. *Paperwork Reduction Act.* The NPRM contains either new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). The Commission will submit the proposed information collections to the Office of Management and Budget (OMB) for review under the PRA. Upon submission to OMB, comments from OMB, the general public, and other federal agencies will be invited on the proposed information collections contained in the proceeding.

Ordering Clauses

28. Pursuant to sections 1, 4, 10, 11, 201–205, 211, 218, 220, 226, 303(g), 303(r) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 160, 161, 201–205, 211, 218, 220, 226, 303(g), 303(r) and 332 the Notice of Proposed Rulemaking is hereby adopted.

29. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601, *et seq.* (1981).

List of Subjects

47 CFR Part 20

Communications common carriers.

47 CFR Parts 42, 61, 63, and 64

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Proposed Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 20, 42, 61, 63 and 64 as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. 154, 160, 251–254, 303, and 332 unless otherwise noted.

2. Section 20.15 is amended by revising paragraphs (c) and (d) to read as follows:

§ 20.15 Requirements under Title II of the Communications Act.

* * * * *

(c) Commercial mobile radio service providers shall not file tariffs for international and interstate service to their customers, international and interstate access service, or international and interstate operator service. Sections 1.771–1.773 and part 61 of this chapter are not applicable to international and interstate services provided by commercial mobile radio service providers. Commercial mobile radio service providers shall cancel tariffs for international and interstate service to their customers, international and interstate access service, and international and interstate operator service.

(d) Nothing in this section shall be construed to modify the Commission's rules and policies on the provision of international service under Part 63 of this chapter. A commercial mobile radio service provider is required to comply with the requirement in § 42.11 if it provides international service to markets where it has an affiliation with a foreign carrier that possesses market power and that collects settlement payments from U.S. carriers. For purposes of this paragraph, affiliation is defined in § 63.18(h)(1)(i) of this chapter.

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PART 42—PRESERVATION OF RECORDS OF COMMUNICATIONS COMMON CARRIERS

3. The authority citation for part 42 continues to read as follows:

Authority: Section 4(i), 48 Stat. 1066, as amended, 47 U.S.C. 154(I). Interprets or applies sections 219 and 220, 48 Stat. 1077–78, 47 U.S.C. 219, 220.

4. Section 42.10 is amended by revising paragraph (a) to read as follows:

§ 42.10 Public availability of information concerning interexchange services.

(a) A nondominant interexchange carrier (IXC) shall make available to any member of the public, in at least one location, during regular business hours, information concerning its current rates, terms and conditions for all of its international and interstate, domestic, interexchange services. Such information shall be made available in an easy to understand format and in a timely manner. Following an inquiry or complaint from the public concerning rates, terms and conditions for such services, a carrier shall specify that such information is available and the manner in which the public may obtain the information.

* * * * *

5. Section 42.11 is amended by revising paragraph (a) to read as follows:

§ 42.11 Retention of information concerning detariffed interexchange services.

(a) A nondominant IXC shall maintain, for submission to the Commission and to state regulatory commissions upon request, price and service information regarding all of the carrier's international and interstate, domestic, interexchange service offerings. A commercial mobile radio service provider of international service shall only maintain such price and service information about its international service offerings and only for those routes on which the commercial mobile radio service provider is affiliated with a foreign carrier that possesses market power. The price and service information maintained for purposes of this paragraph shall include documents supporting the rates, terms, and conditions of the carrier's international and interstate, domestic, interexchange offerings. The information maintained pursuant to this section shall be maintained in a manner that allows the carrier to produce such records within ten business days.

* * * * *

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

6. The authority citation for part 43 continues to read as follows:

Authority: 47 U.S.C. 154; Telecommunications Act of 1996, Public Law 104–104, sec. 402(b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted. 47 U.S.C. 211, 219, 220 as amended.

7. Section 43.51 is revised to read as follows:

§ 43.51 Contracts and concessions.

(a) (1) Any carrier set forth in paragraph (b) of this section must file with the Commission within 30 days of execution a copy of each contract, agreement, concession, license, authorization, operating agreement or other arrangement to which it is a party

and amendments thereto with respect to the following:

(i) The exchange of services; and,

(ii) The interchange or routing of traffic and matters concerning rates, accounting rates, division of tolls, or the basis of settlement of traffic balances, except as provided in paragraph (c) of this section.

(2) If the contract, agreement, concession, license, authorization, operating agreement or other arrangement and amendments thereto is made other than in writing, a certified statement covering all details thereof must be filed by at least one of the parties to the agreement. Each other party to the agreement which is also subject to these provisions may, in lieu of also filing a copy of the agreement, file a certified statement referencing the filed document. The Commission may, at any time and upon reasonable request, require any communication common carrier not subject to the provisions of this section to submit the documents referenced in this section.

(b) The following carriers must comply with the requirements of paragraph (a) of this section:

(1) A communications common carrier that is engaged in domestic communications and has not been classified as non-dominant pursuant to § 61.3 of this chapter,

(2) A U.S. common carrier, other than a provider of commercial mobile radio services, that enters into a contract, agreement, concession, license, authorization, operating agreement or other arrangement and amendments thereto with a foreign carrier that has market power in a foreign market, or

(3) A U.S. carrier that has been classified as dominant on any of the international routes included in the contract, except for carriers classified as dominant on a particular route due only to a foreign carrier affiliation under § 63.10 of this chapter.

(c) With respect to contracts coming within the scope of paragraph (a)(1)(ii) of this section between subject telephone carriers and connecting carriers, except those contracts related to communications with foreign or overseas points, such documents shall not be filed with the Commission; but each subject telephone carrier shall maintain a copy of such contracts to which it is a party in appropriate files at a central location upon its premises, copies of which shall be readily accessible to Commission staff and members of the public upon reasonable request therefor; and upon request by the Commission, a subject telephone carrier shall promptly forward individual contracts to the Commission.

(d) Any U.S. carrier that interconnects an international private line to the U.S. public switched network, at its switch, including any switch in which the carrier obtains capacity either through lease or otherwise, shall file annually with the Chief of the International Bureau a certified statement containing the number and type (*e.g.,* a 64-kbps circuit) of private lines interconnected in such a manner. The certified statement shall specify the number and type of interconnected private lines on a country specific basis. The identity of the customer need not be reported, and the Commission will treat the country of origin information as confidential. Carriers need not file their contracts for such interconnections, unless they are specifically requested to do so. These reports shall be filed on a consolidated basis on February 1 (covering international private lines interconnected during the preceding January 1 to December 31 period) of each year. International private lines to countries for which the Commission has authorized the provision of switched basic services over private lines at any time during a particular reporting period are exempt from this requirement.

(e) *International settlements policy.* (1) If a U.S. carrier files an operating agreement (whether in the form of a contract, concession, license, etc.) with a foreign carrier with market power in that foreign market to begin providing switched voice, telex, telegraph, or packet-switched service between the United States and a foreign point and the terms and conditions of such agreement relating to the exchange of services, interchange or routing of traffic and matters concerning rates, accounting rates, division of tolls, the allocation of return traffic, or the basis of settlement of traffic balances, are not identical to the equivalent terms and conditions in the operating agreement of another carrier providing the same or similar service between the United States and the same foreign point, the carrier must also file with the International Bureau a modification request § 64.1001 of this chapter. Unless a carrier is providing switched voice, telex, telegraph, or packet-switched service between the United States and a foreign point pursuant to an operating agreement that is exempt from the international settlements policy, the carrier shall not bargain for or agree to accept more than its proportionate share of return traffic.

(2) If a carrier files an amendment to an existing operating agreement with a foreign carrier with market power in that foreign market to provide switched voice, telex, telegraph, or packet-switched service between the United States and a foreign point, and other carriers provide the same or similar service to the same foreign point, and the amendment relates to the exchange of services, interchange or routing of traffic and matters concerning rates, accounting rates, division of tolls, the allocation of return traffic, or the basis of settlement of traffic balances, the carrier must also file with the International Bureau a modification request § 64.1001 of this chapter.

(3) A carrier that enters into a contract, including an operating agreement, with a carrier in a foreign point for the provision of a common carrier service between the United States and that point is not subject to the requirements of this subsection if the foreign point appears on the Commission's list of international routes that the Commission has exempted from the international settlements policy.

Note to § 43.51(e)(3): The Commission's list of international routes exempted from the international settlements policy is available from the International Bureau's World Wide Web site at *http://www.fcc.gov/ib.* A party that seeks to add a foreign market to the list of markets that are exempt from the international settlements policy must show that U.S. carriers are able to terminate at least 50 percent of U.S.-billed traffic in the foreign market at rates that are at least 25 percent below the benchmark settlement rate adopted for that country in IB Docket No. 96–261, Report and Order, 12 FCC Rcd 19,806, 62 FR 45758 (Aug. 29, 1997). A party that seeks to remove a foreign market from the list of markets that are exempt from the international settlements policy must show that U.S. carriers are unable to terminate at least 50 percent of U.S.-billed traffic in the foreign market at rates that are at least 25 percent below the benchmark settlement rate adopted for that country in IB Docket No. 96–261.

(f) *Confidential treatment.* (1) A carrier providing service on an international route that is exempt from the international settlements policy under paragraph (e)(3) of this section, but that is otherwise required by paragraphs (a) and (b) of this section to file a contract covering that route with the Commission, may request confidential treatment under § 0.457 of this chapter for the rates, terms and conditions that govern the settlement of U.S. international traffic.

(2) Carriers requesting confidential treatment under this paragraph must include the information specified in § 64.1001(c) of this chapter. Such filings shall be made with the Commission, with a copy to the Chief, International Bureau. The transmittal letter accompanying the confidential filing

shall clearly identify the filing as responsive to § 43.51(f).

Note 1 to § 43.51: To the extent that a foreign government provides telecommunications services directly through a governmental organization, body or agency, it shall be treated as a carrier for the purposes of this section.

Note 2 to § 43.51: Carriers may rely on the Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points for purposes of determining which foreign carriers are subject to the contract filing requirements set forth in this section. The Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points is available from the International Bureau's World Wide Web site at *http://www.fcc.gov/ib.* The Commission will include on the list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points any foreign carrier that has 50 percent or more market share in the international transport or local access markets of a foreign point. A party that seeks to remove such a carrier from the Commission's list bears the burden of submitting information to the Commission sufficient to demonstrate that the foreign carrier lacks 50 percent market share in the international transport and local access markets on the foreign end of the route or that it nevertheless lacks sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market. A party that seeks to add a carrier to the Commission's list bears the burden of submitting information to the Commission sufficient to demonstrate that the foreign carrier has 50 percent or more market share in the international transport or local access markets on the foreign end of the route or that it nevertheless has sufficient market power to affect competition adversely in the U.S. market.

PART 61—TARIFFS

8. The authority citation for part 61 continues to read as follows:

Authority: sections 1, 4(I), 4(j), 201–205, and 403 of the Communications Act of 1934, as amended 47 U.S.C. 151, 154(I), 154(j), 201–205, and 403 unless otherwise noted.

9. Section 61.3 is amended by revising paragraph (u) to read as follows:

§ 61.3 Definitions.

* * * * *

(u) *Non-dominant carrier.* A carrier not found to be dominant. The nondominant status of providers of international interexchange services for purposes of this subpart is not affected by a carrier's classification as dominant as defined in § 63.10 of this chapter.

* * * * *

10. Section 61.19 is revised to read as follows:

§ 61.19 Detariffing of international and interstate, domestic interexchange services.

(a) Except as otherwise provided in paragraphs (b) and (c) of this section, or by Commission order, carriers that are nondominant in the provision of international and interstate, domestic interexchange services shall not file tariffs for such services.

(b) Carriers that are nondominant in the provision of international and domestic, interstate, interexchange services are permitted to file tariffs for dial-around 1+ services. For the purposes of this paragraph, dial-around 1+ calls are those calls made by accessing the interexchange carrier through the use of that carrier's carrier access code.

(c) Carriers that are nondominant in the provision of international and domestic, interstate, interexchange services are permitted to file a tariff for such services applicable to those customers who contact the local exchange carrier to designate an interexchange carrier or to initiate a change with respect to their primary interexchange carrier. Such tariff will enable the interexchange carrier to provide service to the customer until the interexchange carrier and the customer consummate a written agreement, but in no event shall the interexchange carrier provide service to its customer pursuant to such tariff for more than 45 days.

11. Section 61.28 is revised to read as follows:

§ 61.28 International dominant carrier tariff filing requirements.

(a) Any carrier classified as dominant for the provision of particular international communications services on a particular route for any reason other than a foreign carrier affiliation pursuant to § 63.10 of this chapter shall file tariffs for those services pursuant to the notice and cost support requirements for tariff filings of dominant domestic carriers, as set forth in subpart E of this part.

(b) Other than the notice and cost support requirements set forth in paragraphs (a) of this section, all tariff filing requirements applicable to all carriers classified as dominant for the provision of particular international communications services on a particular route for any reason other than a foreign carrier affiliation pursuant to § 63.10 of this chapter are set forth in subpart C of this part.

12. Section 61.74 is amended by removing paragraph (d) and redesignating paragraphs (e) and (f) as paragraphs (d) and (e).

PART 63—EXTENSION OF LINES, NEW LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

13. The authority citation for part 63 continues to read as follows:

Authority: Section 1, 4(I), 4(j), 10, 11, 201–205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, and 571, unless otherwise noted.

14. Section 63.10 is amended by revising paragraph (c)(1) to read as follows:

§ 63.10 Regulatory classification of U.S. international carriers.

* * * * *

(c) * * *

(1) Authorized carriers regulated as dominant for the provision of international communications services on a particular route for any reason other than a foreign carrier affiliation pursuant to this section shall file tariffs for those services as set forth in § 61.28 of this chapter.

* * * * *

15. Section 63.17 is amended by revising paragraph (b)(3) to read as follows:

§ 63.17 Special provisions for U.S. international common carriers.

* * * * *

(b) * * *

(3) Authorized carriers filing tariffs pursuant to §§ 61.19 or 61.28 of this chapter that route U.S.-billed traffic via switched hubbing shall tariff their service on a ''through'' basis between the United States and the ultimate point of origination or termination;

* * * * *

16. Section 63.21 is amended by revising paragraphs (b) and (c) to read as follows:

§ 63.21 Conditions applicable to all international Section 214 authorizations.

* * * * *

(b) Carriers must file copies of operating agreements entered into with their foreign correspondents that possess market power within 30 days of their execution, and shall otherwise comply with the filing requirements contained in § 43.51 of this chapter.

(c) Carriers regulated as dominant for the provision of international communications services on a particular route for any reason other than a foreign carrier affiliation under § 63.10 shall file tariffs pursuant to section 203 of the

Communications Act, 47 U.S.C. 203, and part 61 of this chapter. Carriers regulated as non-dominant, as defined in § 61.3 of this chapter, and providing detariffed interexchange services pursuant to § 61.19 of this chapter must comply with all applicable public disclosure, and maintenance of information requirements in §§ 42.10, and 42.11 of this chapter.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 224 and 226

[Docket No. 001025297-0297-01; I.D. 101000E]

RIN 0648-XA58

Listing Endangered and Threatened Species and Designating Critical Habitat: Petition To List Lower Columbia River Coho Salmon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of finding and request for information.

SUMMARY: NMFS has received a petition to list the lower Columbia River populations of coho salmon (*Oncorhynchus kisutch*) on an emergency basis and to designate critical habitat under the Endangered Species Act (ESA). NMFS determines that the petition presents substantial scientific information indicating that a listing may be warranted, but that there is insufficient evidence to support an emergency listing. NMFS solicits information and comments pertaining to these coho salmon populations and their habitats, and seeks suggestions from the public for peer reviewers for any proposed listing determination that may result from the agency's status review of the species.

DATES: Information and comments must be received by January 2, 2001.

ADDRESSES: Information and comments on this action should be submitted to Chief, Protected Resources Division, NMFS, 525 NE Oregon Street - Suite 500, Portland, OR 97232. Comments will not be accepted if submitted via e-mail or the Internet. However, comments may be sent via fax to (503) 230-5435.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, NMFS, Northwest Region, (503) 231-2005 or Chris Mobley, NMFS, Office of Protected Resources, (301) 713-1401.

SUPPLEMENTARY INFORMATION:

Electronic Access

Reference materials regarding this rule can also be obtained from the internet at www.nwr.noaa.gov.

Background

On July 24, 2000, NMFS received a petition from Oregon Trout, Native Fish Society, and Oregon Council of Trout Unlimited to list wild populations of lower Columbia River coho salmon as endangered under the ESA. The petitioners further requested that NMFS list these populations on an emergency basis and concurrently designate critical habitat for them in accordance with the ESA. Copies of this petition are available from NMFS (See **ADDRESSES**).

Lower Columbia River coho salmon populations have been the subject of two previous ESA status reviews. The first review resulted from a June 7, 1990, petition from Oregon Trout and several co-petitioners requesting ESA protection for lower Columbia River coho salmon. NMFS accepted the petition but later determined that listing was not warranted because available information was inconclusive and did not allow the agency to identify a distinct population segment (hence a ''species'') under the ESA (56 FR 29553, June 27, 1991). In 1993, NMFS received additional petitions which prompted a more comprehensive status review of coho salmon in California, Oregon, Idaho, Washington, and southern British Columbia (60 FR 38011, July 25, 1995). This status review identified six distinct population segments (referred to as Evolutionarily Significant Units or ''ESUs'') of coho salmon, three of which were subsequently listed as threatened species–the central California coast ESU (61 FR 56138, October 31, 1996); southern Oregon/northern California coasts ESU (62 FR 24588, May 6, 1997), and Oregon coast ESU (63 FR 42587, August 10, 1998). NMFS determined that listing was not warranted for three other ESUs - the Olympic Peninsula ESU, Puget Sound/Strait of Georgia ESU, and southwest Washington/lower Columbia River ESU - but that the latter two ESUs should be classified as candidate species due to specific risk factors and concerns about the overall health of the ESUs. The agency committed to re-assessing these candidate ESUs to determine if listing proposals were warranted (60 FR 38011, 38022, July 25, 1995).

In 1996, NMFS' West Coast Coho Salmon Biological Review Team (BRT) updated the 1995 status review and produced a draft document that was distributed to co-managers for review and comment in December 1996 (NMFS, 1996). In this draft update, the BRT reached preliminary conclusions regarding the stock structure of coho populations in the candidate ESUs. With respect to Columbia River coho salmon populations, the BRT concluded that the southwest Washington/lower Columbia River ESU may warrant splitting into separate southwest Washington and lower Columbia River ESUs, but the level of risk faced by these separate ESUs was still in question. Since the time of these preliminary conclusions, NMFS has continued to update and compile data via meetings with comanagers and coho salmon experts in the Pacific Northwest but has not proposed any changes to the ESA status of the candidate ESUs.

Analysis of Petition

Section 4(b)(3) of the ESA contains provisions concerning petitions from interested persons requesting the Secretary of Commerce (Secretary) to list species under the ESA (16 U.S.C. 1533(b)(3)(A)). Section 4(b)(3)(A) requires that, to the maximum extent practicable, within 90 days after receiving such a petition, the Secretary must make a finding whether the petition presents substantial scientific information indicating that the petitioned action may be warranted. This includes determining whether there is evidence that the subject populations may qualify as a ''species'' under the ESA, in accordance with NMFS' Policy on Applying the Definition of Species under the Endangered Species Act to Pacific Salmon (56 FR 58612, November 20, 1991).

NMFS' ESA implementing regulations define ''substantial information'' as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In evaluating a petitioned action, the Secretary considers several factors, including whether the petition contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species (50 CFR 424.14(b)(2)(ii)). In addition, the Secretary considers whether the petition provides information regarding the status of the species over all or a significant portion of its range (50 CFR 424.14(b)(2)(iii)).